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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,455	04/08/2004	Myles S. Douglas	ENDOLOG.054A	7278

20995 7590 05/17/2010  
KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER
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TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

NOTIFICATION DATE	DELIVERY MODE
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05/17/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
efiling@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,455	<b>Applicant(s)</b> DOUGLAS ET AL.	
	<b>Examiner</b> MELANIE TYSON	<b>Art Unit</b> 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2010 and 30 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 31-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 31-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/30/10</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 15 March 2010 and 30 April 2010 have been entered. Claims 19-30 remain cancelled.

### ***Response to Arguments***

Applicant's arguments filed 15 March 2010 with respect to the Solovay reference have been fully considered and are persuasive. The examiner agrees that Solovay fails to disclose the sheath is uniform in that the limitation "a uniform porous tubular ePTFE sheath" is considered to require a porous sheath that is not varying or not variable along its length. Since Solovay's sheath pore size and pore spacing varies along its length, Solovay's sheath is not considered to be "uniform" as now required in the amended claims. Therefore, the amendments overcome the previous rejection and a new rejection has been set forth below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-18 and 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S Patent No. 5,824,046) and Shaolian et al. (U.S. Patent No. 6,197,049).** Smith discloses a stent graft (see entire document) comprising a tubular support (frame structure 10) and a porous tubular ePTFE sheath on the tubular support (12). Smith further discloses that the sheath is configured to inhibit sufficient cellular ingrowth on the luminal surface through its wall (disclosed as providing an effective barrier to prevent excessive cell or tissue ingrowth, thus considered to inhibit “sufficient” cellular ingrowth as recited in the claims). Smith fails to disclose the tubular support is structured as recited in the claims.

Shaolian discloses a stent graft and teaches the stent is formed as a tubular wire support having all the configurations as claimed (see columns 6-21). The substitution of one known element (stent as shown in Shaolian) for another (stent as shown in Smith) would have been obvious to one of ordinary skill in the art at the time of the invention since the substitution of the stents would have yielded predictable results, namely, providing an expandable body that sufficiently supports a blood vessel.

With further respect to claims 2-10, 17, and 31-43, Smith incorporates by reference U.S. Patent No. 5,175,052 to Tokuda for manufacturing the porous ePTFE tape that forms the sheath, in which Tokuda discloses the porosity, pore size, permeability, and thickness of the sheath are easily formed and controlled as desired by a stretch ratio adjustment. It is well known in the art that different applications and the intended use of the stent graft dictates the characteristics required to effectively treat the diseased tissue. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the sheath having a density, a thickness, a distance between nodes, and a water pressure entry within the ranges claimed if the application required such characteristics, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 10-8 (max flex)

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/  
Examiner, Art Unit 3773  
May 12, 2010